

**DALAM MAHKAMAH RAYUAN MALAYSIA
(BIDANGKUASA RAYUAN)
RAYUAN SIVIL NO. W – 02 – 982 –2006**

ANTARA

MOTILAL REALTY SDN BHD
(No. Syarikat: 237482-K)

... PERAYU

DAN

SUNLITE TEXTILE SDN BHD
(No. Syarikat: 401930-K)

... RESPONDEN

(Dalam Mahkamah Tinggi Malaya Di Kuala Lumpur
(Bahagian Sivil)

Saman Pemula No. S6-24-1015-2006

Dalam Perkara Satu Perjanjian
Jual Beli bertarikh 22-3-2002

Dan

Dalam Perkara Aturan 7 dan 28
Kaedah-Kaedah Mahkamah
Tinggi, 1980

Antara

Sunlite Textile Sdn Bhd
(No. Syarikat: 401930-K)

... Plaintiff

Dan

Motilal Realty Sdn Bhd
(No. Syarikat: 237482-K)

... Defendan)

Coram: Gopal Sri Ram, J.C.A.
Abdull Hamid bin Embong, J.C.A.
Heliliah bt Mohd Yusof, J.C.A.

JUDGMENT OF GOPAL SRI RAM, J.C.A.

1. This is a rather large storm in a small teacup. The centre of the storm is the order of this Court made on 28 August 2007, whereby the appellant was granted leave to adduce further evidence

by way of an affidavit affirmed by one Mahesh Kumar and dated 10 August 2007. What the appellant then did was to file a supplementary appeal record containing the further evidence. The respondent by a motion dated 31 October 2007 sought to have the supplementary appeal record struck out (I think what the respondent means is to have the record in question excluded) and to preclude the appellant from adducing the further evidence in question – although the actual words of the prayer in the motion are “that the appellant shall not be at liberty to adduce further evidence”.

2. The respondent’s complaint appears to be this. The appellant was granted leave to adduce further evidence. It ought to have simply filed in the further evidence. This would have enabled the respondent to file its rebuttal evidence. By filing the affidavit by way of a supplementary appeal record the appellant had not complied with the order of 28 August 2007. That record was therefore not properly before the court and ought to be excluded. In my judgment, the point taken by the respondent is without any merit. The appellant was indeed given leave to adduce further evidence. The precise nature and form of the evidence was identified by the order of 28 August 2007. The fact that the appellant chose to produce the further evidence by way of a supplementary appeal record has not prejudiced the respondent in any way. For it is only a matter of form and not substance and nothing turns upon it.

3. All that the respondent need have done is to have sought leave from this Court to deliver its evidence in rebuttal. For, it is entirely consonant with the rules of natural justice that rebuttal evidence be

admitted. See, The Land Acquisition Officer, City Improvement Trust Board, Bangalore v. H. Narayanaiah AIR 1976 SC 2403; Sheo Shankar Prasad Sinha v State of Bihar AIR 2003 Pat 30.

There is a conflict of evidence on whether the respondent did in fact make an application in that behalf. According to the evidence filed by the appellant, when this Court made its order on 28 August 2007, counsel for the respondent did apply to file an affidavit in reply. This Court however refused that application. Counsel concerned has filed an affidavit denying that any such thing happened. According to him, this Court expressed no view on the respondent's aforesaid application but left it to the respondent to do the needful to deliver its rebuttal evidence. Accepting the respondent's version, it ought in my view, to have filed its rebuttal evidence instead of filing the present motion.

3. As for the second order sought, what the respondent seeks to do is to have us reverse this Court's earlier order of 28 August 2007. This Court, of course, has no jurisdiction to do any such thing. The facts are that the respondent did apply to the Federal Court seeking leave to appeal against the order in question which application was dismissed with costs. The present motion was filed after that dismissal no doubt as an attempt to set aside the order of 28 August 2007.

4. For the reasons already given, it is my judgment that the respondent's application is frivolous and vexatious and devoid of any merit. It was accordingly dismissed with costs to be paid in any event.

5. My learned brother Abdull Hamid bin Embong and my learned sister Heliliah bt Mohd Yusoff have seen this judgment in draft and have expressed their agreement with it.

Dated: 7 October 2008

Gopal Sri Ram
Judge, Court of Appeal
Malaysia
Putrajaya

Counsel for the appellant: Ramdas Tikamdas

Solicitors for the appellant: Tetuan Siva Ram & Associates

Counsel for the respondent: Amarjeet Singh

Solicitors for the respondent: Tetuan T.K. Wong, Tan & Associates